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Washington, D.C. 20415
May 30, 1986

Table of Changes

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		Entire Supplement	Transmits new supplement established to provide agencies guidance on the Social Security Retirement, Survivors and Disability Insurance, and Medicare Program.

Social Security Retirement, Survivors and Disability Insurance, and Medicare Program

Office of Personnel Management • Federal Personnel Manual System

May 1986

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FPM Supplement 832–1

Social Security Retirement, Survivors and Disability Insurance, and Medicare Program

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The material in this supplement is included in the FEDERAL PERSONNEL MANUAL for the use of Federal agencies. Questions about Social Security taxation should not be directed to the Office of Personnel Management. They should be referred to the Internal Revenue Service as in section S1–3. Questions about Social Security coverage should be directed to agency personnel offices for referral to the Social Security Administration. Questions about specific cases should include the Social Security number of the worker involved.

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Subchapter S1. Application to Federal Civiiian Employment—General

S1–1. INTRODUCTION

a. Social Security program. As used in this supplement the *Social Security program* encompasses the collection of Social Security taxes, the payment of Social Security benefits, and the administration of Medicare (a program of hospital insurance for the aged and disabled).

b. Coverage. The original Social Security Act (act) of 1935 excluded all service performed in the employ of the United States Government and wholly-owned instrumentalities thereof. The act was amended in 1950, and later years, to provide Social Security coverage of service of those Federal civilian employees not covered under the Civil Service Retirement System or another Federal retirement system; also coverage was extended to employees of some Federal instrumentalities as a supplement to coverage under the retirement system of the instrumentality. Service of all uniformed members of the Armed Forces on active duty was covered beginning with 1957. The provisions of law in effect before 1983 are sometimes referred to in this supplement as "old law."

Section 278 of Public Law (P.L.) 97–248, the Tax Equity and Fiscal Responsibility Act of 1982, provides that the salary of practically all Federal employees who were not subject to Social Security taxation would nevertheless be subject to the hospital insurance (HI) portion of the Social Security Tax. This provision became effective for wages paid after December 31, 1982.

Section 101 of P.L. 98–21, the Social Security Amendments of 1983, provided Social Security coverage of newly hired Federal employees, the President and Vice-President, members of Congress, Federal judges, and certain other Federal employees. This provision was effective for wages paid after December 31, 1983.

Section 2601 of P.L. 98–369, The Deficit Reduction Act of 1984, corrected certain *gaps and anomalies* in P.L. 98–21. The provisions of this legislation were retroactive to January 1, 1984.

S1–2. APPLICABLE PROVISIONS OF LAWS

a. FICA or Social Security Tax. The Federal Insurance Contributions Act (FICA), Chapter 21 of the Internal Revenue Code (code), imposes a payroll tax, commonly referred to as FICA or Social Security tax, upon both employers and employees. The tax is a percentage of the wages paid to an employee for work in covered employment, up to a maximum amount for a year; it is in two parts. The largest is the old-age, survivors and disability insurance (OASDI) part; it is allocated to the trust funds from which Social Security retirement, survivors and disability insurance benefits are paid. The smaller part is the hospital insurance (HI) part; it is allocated to the trust fund from which Medicare benefits are paid. The combined or full tax is referred to as the OASDIHI tax. (See section S2–16 for tax rates and allocations and maximum wages subject to tax.)

b. Definitions. Section 3121 of the code defines the terms *wages*, *employment*, and *employee* and specifies certain exceptions to those terms. The Social Security Act, for Social Security benefit purposes, contains provisions similar to those in the code. Section 209 defines *wages* and section 210 defines *employment* and *employee* (42 U.S.C. 409 and 410).

c. Coverage of Federal employees. Section 3121(b)(5) of the code (26 U.S.C. 3121(b)(5)) and section 210(a)(5) of the act (42 U.S.C. 410(a)(5)) provide for the coverage of Federal employees. Section 3121(u) of the code and section 210(p) of the act concern HI coverage and taxation of those employees not subject to the full OASDIHI tax.

d. Agency responsibilities. In addition to the above provisions of law, section 3122 of the code and section 205(p) of the act (42 U.S.C. 405(p)) address the responsibilities of Federal agencies with respect to Federal employment covered by Social Security. These sections provide, in effect, that determinations as to employment and wages for employees of the United States, or its wholly-owned instrumentalities, are to be made by the head of the employing agency or instrumentality, or by his/her designated agents. Such deter-

minations are made in accordance with the applicable provisions of the code and act. (See section S1–6 for further discussion of agency determinations.)

S1–3. DETERMINATIONS ON SOCIAL SECURITY COVERAGE AND TAXATION OF FEDERAL EMPLOYEES

The President has directed the Internal Revenue Service and the Social Security Administration to provide guidance to executive departments and agencies in interpreting the provisions of law pertaining to Social Security coverage and taxation of Federal employees. This is contained in a memorandum dated May 15, 1985, for the heads of executive departments and agencies which includes the following statement:

"In order to ensure that Social Security coverage and taxation will be consistently and efficiently applied within the Executive branch in conformance with the Social Security Act and the Internal Revenue Code, I am hereby directing that the Internal Revenue Service and the Social Security Administration provide guidance to Executive departments and agencies concerning Social Security coverage and taxation for Federal personnel, including applicable regulations and published rulings and procedures. I ask the heads of Executive departments and agencies to follow such guidance in making their determinations under the aforementioned sections 205(p) and 3122."

Federal agencies and instrumentalities may use the information in this supplement and applicable provisions of the Internal Revenue Code to determine whether employment is subject to full, partial or no Social Security taxation, and whether payments made to employees are *wages* for Social Security taxation purposes. If any Federal agency or instrumentality has any questions about the information provided here or about interpretation of the law, the question should be referred to the head of the appropriate agency. Questions on taxation may be sent from the agency head for a written opinion to the Internal Revenue Service, 1111 Constitution Ave NW., Washington, D.C. 20224, Attention: Chief, CC: IND:I:1.

S1–4. RESPONSIBILITIES OF THE INTERNAL REVENUE SERVICE (IRS)

The IRS is responsible for determining liability for Social Security taxes and collecting such taxes. The IRS provides employers with appropriate instructions with respect to employer responsibilities in this connection.

S1–5. RESPONSIBILITIES OF DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Two components of HHS have responsibility for the Social Security program. They are:

a. The Social Security Administration (SSA). SSA is responsible for the payment of retirement, survivors and disability benefits to individuals who meet eligibility requirements. SSA maintains records of earnings reported for individuals subject to Social Security taxes. It uses these records to determine if a worker has sufficient employment covered by Social Security to be insured for retirement, survivors or disability benefits. The amount of benefits payable is based upon the earnings reported.

b. The Health Care Financing Administration (HCFA). HCFA administers the Medicare program. See subchapter S4 for a discussion of Medicare (health insurance) benefits.

S1–6. RESPONSIBILITIES OF EMPLOYING AGENCIES

The employing agency, or instrumentality, has certain responsibilities with respect to the withholding and payment of Social Security taxes, as explained in S1–6a through S1–6e.

a. Determining the employees whose wages are subject to Social Security taxes. Subchapter S2 explains Federal employment which is covered by Social Security and subject to full OASDIHI Social Security taxation. A few types of Federal employment are excluded from all Social Security taxes, as explained in section S2–10. Other Federal employment is subject only to the hospital insurance portion of the Social Security tax. Section S2–14 explains wage payments which are subject to both OASDIHI and only HI Social Security taxation. A Federal agency must determine the Social Security tax status of wages paid for services of its own employees under the pertinent provisions of law, as explained in this supplement.

b. Obtaining the Social Security number of each employee. The employee's name and Social Security number is to be taken from his/her Social Security card and used on the appointing SF–50, Form W–2 and all other documents where it is required. If an employee was never issued a number, have him/her contact the

nearest Social Security office to complete Form SS–5, Application for Social Security Number Card. The employee must present evidence of age, identity and U.S. citizenship or lawful alien status. If the card has been lost or the name changed, a new card should be obtained. For a change of name request, the employee must present evidence showing both the old and new name. For a replacement card, the employee must show evidence of identity and, if foreign-born (or U.S.-born but no longer a U.S. citizen) evidence of U.S. citizenship or current lawful alien status.

c. Withholding Social Security taxes from employee's wages. (Sections S2–13 through S2–15 explain wages which are and are not subject to Social Security taxes and the tax rates.) The agency is also responsible for depositing Social Security taxes periodically, in accordance with IRS instructions; and filing Form 941 with the IRS quarterly, and reconciling taxes withheld to wages paid.

d. Furnishing employees with Forms W–2, (Wage and Tax Statement). Employees must be furnished Forms W–2 completed in accordance with IRS instructions by January 31 of the year following the year wages were paid.

e. Copy A of Forms W–2. Agencies are responsible for sending copies A of the Forms W–2, or a magnetic media wage report, to the appropriate SSA Data Operations Center, as instructed by IRS.

Subchapter S2. Social Security Coverage and Taxation of Federal Civilian Employment

S2–1. SOCIAL SECURITY COVERAGE AND TAXATION STATUS OF FEDERAL CIVILIAN EMPLOYMENT

Prior to January 1, 1984, most Federal civilian employment was subject only to the health insurance portion of the Social Security tax, beginning with wages paid after December 31, 1982. Employment covered by Social Security prior to 1984, and subject to full Social Security taxation, was primarily service of temporary or intermittent employees which was not covered by a retirement system established by a law of the U.S. The following categories of Federal civilian employment are covered by Social Security and subject to full OASDIHI Social Security taxation for service performed after December 31, 1983:

a. Service performed as the President or Vice-President of the United States;

b. Service performed as the Chief Justice of the United States, an associate justice of the Supreme Court, a judge of a United States Court of Appeals, a judge of a United States district court (including the district court of a territory), a judge of the United States Claims Court, a judge of the United States Court of International Trade, a judge of the United States Tax Court, a United States Magistrate, or a referee in bankruptcy or United States bankruptcy judge;

c. Service performed as a Member, Delegate, or Resident Commissioner of or to the Congress;

d. Service performed—

(1) in a position placed in the Executive Schedule under section 5312 through 5317 of title 5, United States Code;

(2) as a noncareer appointee in the Senior Executive Service or a noncareer member of the Senior Foreign Service; or

(3) in a position to which the individual is appointed by the President (or his designee) or the Vice-President under section 105(a)(1), 107(a)(1) or (b)(1) of title 3, United States Code, of the maximum rate of basic pay for such position is at or above the rate for level V of the Executive Schedule (see section S2–3 for a further discussion of this provision);

e. Service performed by employees who:

(1) are hired for the first time on or after December 31, 1983 (no prior Federal employment);

(2) were in the employ of the Federal Government on or after January 1, 1984, in a position subject to full Social Security coverage and taxation under the old-law (e.g., in the uniformed services or a temporary employee);

(3) return to Federal employment after a separation of more than 365 days, but see sections S2–6, S2–7, and S2–8 for exceptions when the former employee returns to service after serving with an international organization, the American Institute of Taiwan, or the Armed Forces of the United States; or

(4) return to Federal employment after a separation of *less* than 366 days AND the prior employment was subject to full Social Security coverage and taxation under the law as in effect prior to 1983.

See section S2–5 for further rules on coverage of services performed by individuals who were in the employ of the legislative branch on December 31, 1983. See section S2–9 for rules concerning re-employed annuitants and Workers' Compensation recipients.

S2–2. APPLICATION OF SOCIAL SECURITY LAW

Example 1: Reemployment after a separation of more than 365 days. Marie, a former employee of the Treasury Department, resigned in 1982. She was re-employed in June 1984, as a permanent employee in a position subject to coverage under the Civil Service Retirement Act. Since she has been separated from Federal employment for more than 365 days, her services are subject to full OASDIHI coverage and taxation.

Example 2: Temporary employee becomes permanent. Allen was hired on November 24, 1983, by the Department of Commerce as a temporary employee. His services were covered by Social Security because he was not eligible for coverage by the Civil

Service Retirement System or any other retirement system. On February 4, 1984, he was given a career-conditional appointment. Although November 24, 1983, is the date he was hired, he was covered by Social Security under old law provisions on January 1, 1984. Therefore, his services continue to be covered by full Social Security.

Example 3: Separation of less than 366 days—LWOP involved. Jane, a career employee of IRS in an appointment subject to coverage under the Civil Service Retirement System, was on maternity leave beginning January 1983. After using all leave, she was placed on leave without pay until November 15, 1983, when she resigned. Jane was rehired by the IRS on November 1, 1984. Jane will be subject to only the HI part of the Social Security tax as her break in service did not exceed 365 days, and her previous service was not subject to the OASDIHI tax.

S2–3. EXECUTIVE SCHEDULE AND SENIOR EXECUTIVE SERVICE POSITIONS

a. Executive schedule. Service in a position placed in the Executive Schedule under sections 5312–5317 of title 5, U.S. Code, is mandatorily covered with respect to service performed after December 31, 1983. Service in a position which is not listed in those portions of the Executive Schedule, but which when established was designated to be treated as if it were listed therein, is not automatically covered. Coverage of service of individuals whose employment is in such positions will follow the rules of subsection S2–1e.

b. Senior Executive Service (SES). Some SES positions (see 5 U.S.C. 3132) were listed in the Executive Schedule (5 U.S.C. 5315 and 5316) before the SES was established and have not been deleted. The creation of the SES effectively removed such positions from the Executive Schedule. Therefore, an agency should determine the status of service in an SES position without regard to Executive Schedule listing. The service of a career SES appointee will be covered on or after January 1, 1984, only under the rules of subsection S2–1e. Service of a noncareer SES appointee will be covered beginning January 1, 1984, regardless of such appointee's previous election to opt in or out of Civil Service Retirement coverage.

S2–4. TRANSFERS BETWEEN AGENCIES AND CHANGES OF POSITIONS

a. Regular civilian employment. Individuals who transfer from one agency to another without a break in service, or after a separation of less than 366 days, are not newly hired Federal employees. However, the new employing agency must consider whether the prior service was subject to Social Security taxation.

The coverage status is as follows:

If service in the former positions were excluded from the OASDI portion of the Social Security tax under the old law, services in new positions will be excluded from OASDI portion of the tax. Conversely, if services in the former positions were subject to the OASDI tax, service in the new positions will also be subject to the OASDI tax.

Example 1: Prior work for an instrumentality of the U.S. was covered. Mark was hired by the Department of Defense on February 4, 1985. He was previously employed by the Tennessee Valley Authority (TVA), an instrumentality of the United States, until December 7, 1984. Mark is not considered as being hired for the first time by the Federal Government. However, under old law provisions, service for the TVA was subject to full Social Security taxation, and this will carry over to his new job, even though his separation did not exceed 365 days.

Example 2: Temporary employee becomes permanent. John was a temporary employee in the Department of Commerce and subject to full Social Security taxation under the old law. He was separated from this employment in November 1984. In July 1985, he obtained a career-conditional appointment in the Department of Interior. His services will be subject to full Social Security taxation.

b. Transfer from executive position mandatorily covered to regular Federal civilian employment. A Federal employee whose services were excluded from the OASDI portion of Social Security tax under the law as in effect prior to 1983 (old law), who transfers to an executive position mandatorily covered (See subsections S2–1a through S2–1d.) and subsequently returns to regular Federal civilian employment that was excluded under the old law will not be subject to the OASDI tax.

S2–5. LEGISLATIVE BRANCH EMPLOYEES

Services of individuals in the employ of the legislative branch on January 1, 1984, are subject to full Social Security coverage and taxation if, on December 31, 1983, they were not contributing to the Civil Service Retirement System (CSRS) or another Federal civilian retirement system.

Services of individuals in the employ of the legislative branch who were participating in the CSRS or another Federal retirement system (other than one for members of the uniformed services) on December 31, 1983, but who received lump-sum payments from the Federal retirement system after December 31, 1983, or who otherwise ceased to be subject to CSRS or another retirement system after that date are subject to full Social Security tax. However, such an employee who received or filed to receive a lump-sum payment before June 15, 1984, from a Federal retirement system or who otherwise ceased to be subject to the CSRS after December 31, 1983, could be excluded from the OASDI portion of the Social Security tax if he joined the CSRS within 30 days of July 18, 1984. A legislative branch employee who is hired after July 18, 1984, after a break in Federal service of less than 366 days and who otherwise meets these requirements could be excluded from the OASDI portion of the Social Security tax if he joined CSRS within 30 days after he is hired. Coverage of those *not* in the employ of the legislative branch on January 1, 1984, follow the general rules of subsection S2–1c.

S2–6. REEMPLOYMENT AFTER SERVICE WITH AN INTERNATIONAL ORGANIZATION

Under 5 U.S.C. 3343, an employee may be detailed to duty with an international organization while remaining an employee of his agency. Under 5 U.S.C. 3581, an employee may transfer from a position with a Federal agency to a position with an international organization. (An *international organization* means a public international organization in which the Government of the United States participates.) If an employee is exempt from the OASDI portion of the Social Security tax prior to being detailed or transferred, the employee continues to be exempt upon return to service regardless of how many days the employee has been away from such service.

For example, John was a career employee of HHS in a position subject to the Civil Service Retirement Act. In March 1980, he was detailed (or transferred) to serve a 5-year assignment with the World Health Organization. In July 1985, he requested that he be detailed (or transferred) back to his former employment with HHS. Upon return, his services are excluded from the OASDI Social Security coverage and taxation.

S2–7. REEMPLOYMENT AFTER SERVICE WITH THE AMERICAN INSTITUTE OF TAIWAN

Under 22 U.S.C. 3310, an employee may separate from employment with the United States to serve with the American Institute of Taiwan. Upon completion of such service, the individual is entitled to reemployment by his or her former agency. Service by an individual so reemployed is an exception to the general rule that service performed after a separation exceeding 365 days is subject to the OASDI portion of the Social Security tax. The time of service with the Institute shall be disregarded in determining the length of separation.

S2–8. EMPLOYMENT OF FORMER SERVICEMEMBERS

For Social Security purposes, service as a member of a uniformed service is considered employment for the United States. However, such service has been subject to full Social Security coverage since 1957. Therefore, a former servicemember first employed in a civilian capacity on or after January 1, 1984, will be subject to full Social Security coverage under subsection S2–1e(3) or (4). A special rule applies for a former civilian employee who has a tour of duty as a member of a uniformed service (including service in the National Guard and temporary service in the Coast Guard Reserve), and is exercising reemployment or restoration rights under chapter 43 of 38 U.S.C. If the prior civilian service of such employee was exempt from the OASDI portion of the Social Security tax and coverage at the time of entry on military duty, the employee is not subject to the OASDI portion of the Social Security tax and coverage upon return to civilian employment.

The following two examples explain this provision:

Example 1: James was discharged from the Army with 6 years service on July 7, 1984. Five months later he was hired by the Social Security Administration. Service in the Armed Forces is considered to be service in the employ of the United States. However, as a servicemember he was covered by Social Security. His hiring by SSA was not the result of an exercise of reemployment rights. Because he was an employee of the Federal Government on January 1, 1984, and subject to full OASDIHI Social Security taxation, his employment by SSA is subject to full Social Security taxation.

Example 2: Paul, a career employee of the Department of Defense, resigned to accept a 3-year active duty appointment with the National Guard of "X" State. He was serving such assignment on December 31, 1983. His assignment was completed on April 14, 1984. On May 1, 1984, he exercised his reemployment right and returned to his previous job. Paul is not subject to the OASDI portion of the Social Security tax but is subject to the HI portion.

S2–9. REEMPLOYED ANNUITANTS AND WORKERS' COMPENSATION RECIPIENTS

a. Annuitants-General. There is a special rule for the Social Security coverage of reemployed annuitants. The service is excluded from the OASDI portion of the Social Security tax if:

(1) it would be excluded under the old law provisions; and

(2) it is performed by an annuitant. An annuitant is one receiving an annuity from the Civil Service Retirement and Disability Fund or benefits (for services as an employee) under another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services). An individual who receives annuities both as a retired member of the uniformed service and as a civilian employee is considered an annuitant. An individual whose annuity has been terminated is not an annuitant. The rules in subsections S2–1e(2) through S2–1e(4) apply.

b. Civil Service annuitants. As applied specifically to Civil Service annuitants, 5 U.S.C. 8344 provides, with limited exceptions, that a reemployed annuitant is subject to the Civil Service Retirement Act. This excludes the services from Social Security coverage under old law provisions. Since excluded service performed by an annuitant is excluded from the OASDI portion of the Social Security tax, only HI should be withheld.

c. Other than Civil Service annuitants. The above does not necessarily apply to individuals receiving annuities from other than the Civil Service Retirement and Disability Fund. For example, retired former members of the Foreign Service are not permitted to rejoin the Service except under extraordinary circumstances. Some do return to work for the Federal Government, often under temporary appointments, as General Schedule employees not to exceed 1 year and are not covered by either the Foreign Service or Civil Service retirement systems. Service in such a temporary appointment was *not* excluded from Social Security coverage under old law provisions, and the special rule concerning reemployed annuitants does not apply. The general rules of subsections S2–1e(2) through S2–1e(4) apply.

d. Workers' Compensation Recipients. It is a matter of agency discretion as to whether an employee receiving compensation for a work-related injury is carried in a leave of absence without pay status or is absolutely separated from Federal service. For purposes of civil service retirement, Congress has stated that no distinction should be made between the separated employee and the employee on leave of absence while receiving workers' compensation; the former should be considered to be on leave. This same rule is adopted for Social Security tax and coverage purposes. An employee or former employee who is receiving benefits under subchapter I of chapter 81 of title 5 of the United States Code is not considered to be separated from employment. The compensation is not wages and thus not subject to Social Security taxes. However, the improved condition of many recipients permits a return to duty. Apply the rules of subsections S2–1e(2) through S2–1e(4) to determine whether the subsequent duty is subject to the OASDI portion of the Social Security tax. In determining length of separation from service, if any, disregard all periods of time during which the employee was (or was considered to be) on leave of absence without pay.

S2–10. TOTALLY EXCLUDED EMPLOYMENT

The following Federal employment is specifically excluded from any Social Security taxation:

(a) service performed by an inmate in a U.S. penal institution;

(b) service performed by an employee included under 5 U.S.C. 5351(2), which relates to certain interns, student nurses, and other student employees of Federal Government hospitals, but does not include a medical or dental intern or resident in training;

(c) service performed by an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency; and

(d) service performed by a nonresident alien individual temporarily present in the U.S. as a nonimmigrant under subparagraphs (f) or (j) of section 101(a)(15) of the Immigration and Nationality Act.

S2–11. SERVICE WITHIN AND OUTSIDE THE U.S.

a. Service within the U.S. For Social Security

purposes, the *U.S.* is the 50 States, the District of Columbia, Puerto Rico, Virgin Islands, Guam, and American Samoa. The rules for coverage and taxation apply to employment performed within the U.S. without regard to the citizenship or place of residence of the employee.

b. Service outside the U.S. The rules for coverage and taxation apply to employment performed outside the U.S. only if the employee is a U.S. citizen or, beginning January 1, 1984, a resident alien of the U.S. The Departments of Defense and State are the principal agencies employing people outside the U.S., and this provision will relate primarily to them. Effective with 1984, the rules on coverage of resident aliens working outside the U.S. are the same as for citizens working outside the United States. Those hired for the first time after December 31, 1983, are subject to full OASDIHI Social Security taxation. In general, those working before 1984 are covered beginning January 1, 1984, if they were not under a Federal retirement system at that time. Those under a Federal retirement system on that date are subject, as of that date, to only the Hospital Insurance portion of the tax.

Example 1: Maria, a resident alien, is an employee of the U.S. Embassy in country H. Her services are subject to the Civil Service Retirement Act and thus are exempt from Social Security coverage under "old law" provisions regarding Federal government. She did not become subject to Hospital Insurance tax in January 1983, because of the general exclusion pertaining to services performed outside the U.S. by persons not citizens of the U.S.; however, as of January 1984, this provision was modified to give U.S. residents the same treatment as U.S. citizens. Therefore, Maria's wages are subject to HI taxation as of January 1984.

Example 2: Marco, a resident of the U.S., is employed by the U.S. Navy in country P. His service is not subject to any Federal retirement system. Under "old law" provisions, his services would be subject to Social Security taxation but for the general exclusion relating to employment performed outside the U.S. When this exclusion was modified as of January 1984, Marco's service became subject to full Social Security taxation.

c. Service under international agreements. The above rules may be modified by international agreements. At the time of this writing, agreements are in effect with Belgium, Canada, Germany, Italy, Norway, Switzerland and the United Kingdom. A purpose of such agreement is to insure that an individual is taxed only by one country. In determining the status of an individual, the agreement, rather than the Social Security Act, may control. For example, under the U.S.–German agreement, a person hired in the U.S. and transferred to work in Germany on a temporary basis for the same employer remains subject to the Social Security laws of the U.S.; a person hired in Germany is subject only to the German Social Security laws. Under the U.S.–Italian agreement, a person who is not a national of either country but is working in Italy is subject only to the Italian Social Security law. Further details on the agreements may be obtained from the Federal Benefits Unit at the U.S. Embassies in Brussels, Ottawa, Rome, Oslo and London, and the Consulates General at Frankfurt and Zurich, or from the Social Security Administration.

d. Resident alien. *Resident alien of the U.S.* is defined in section 7701(b) of the Internal Revenue Code. Under that section, an individual is a "resident alien" if the individual meets either a substantial presence in the U.S. test or the individual is lawfully admitted for permanent residence. The first is, by its nature, unlikely to apply to services performed outside the U.S. Employing agencies need to concern themselves principally with the second condition, the "green card" test. Under this test, a *resident alien* is a lawful permanent resident of the U.S. if at any time such individual has the status of having been lawfully accorded the privilege of residing permanently in the U.S. as an immigrant in accordance with the immigration laws and such status has not been revoked (or has not been administratively or judicially determined to have been abandoned). Keep in mind that if an individual is a resident for Social Security tax purposes, he/she is a resident for income tax withholding purposes.

S2–12. DEFINITION OF "EMPLOYEE"

There may be instances where individuals are engaged to perform work for the Federal Government, and there is a question as to whether the individual is performing the work as a self-employed individual or as an employee. Where the Federal agency has the right to control the individual as to the manner in which the work will be done, and when and where it will be done, the individual is an *employee* for purposes of Social Security coverage and taxation. If income tax is withheld, generally it can be assumed that the individual is an employee.

S2–13. DEFINITION OF "WAGES"

Wages subject to OASDI and/or HI Social Security taxation means all remuneration for employment not

specifically excluded by law. Wages may be paid on an hourly, weekly, monthly, or yearly basis. Wages may be paid to the worker whose employment is involved or to a third party on his behalf, e.g., a trust, union funds, or a bank. The amount of wages actually paid to the employee during the year is to be reported on Form W–2.

S2–14. PAYMENTS WHICH ARE WAGES

The following payments are wages for Social Security coverage and taxation purposes:

a. Salary. Regularly scheduled payments as set by law for the worker's grade and schedule, including pay for overtime (WG, GS, GM, etc.);

b. Cost-of-living allowances. Payments made in addition to the regular salary to workers in certain geographic areas.

c. Awards. All bonuses and awards paid workers by the employing agency;

d. Vacation pay and pay in lieu of vacation, including accumulated annual leave upon termination of employment;

e. Sick and accident disability payments made during the month of sickness/accident and the next six full calendar months;

f. Dismissal or severance—payment to an employee involuntarily separated without cause who has been employed continuously for at least 12 months, is not entitled to an immediate annuity and is not serving under an appointment with a time limitation;

g. Backpay—but only if the wages for the period of time in question would have been subject to Social Security taxation; however, any backpay made beginning January 1, 1983, is subject to HI tax;

h. Wages earned before the worker's death and paid after death to a survivor or the worker's estate if paid in the year of death;

i. Employee taxes deducted from the employee's wages;

S2–15. PAYMENTS WHICH ARE NOT WAGES

a. Traveling expenses—advances or reimbursements for traveling expenses incurred in the business of the employer, including per-diem;

b. Sick pay after expiration of six calendar months following the last calendar month in which the employee worked for the employer;

c. Moving expenses if they are deductible for income tax purposes under and in the amounts stipulated by section 217 of the code;

d. Meals and lodging if furnished on the premises of the employer and for the convenience of the employer, and in the case of lodging, the employee is required to accept as a condition of employment;

e. Uniform or special clothing allowance.

S2–16. TAX RATES AND MAXIMUM TAXABLE WAGES

The Social Security tax rate schedule for employees and employers, each, is shown below:

	Employee Rate			*Employer Rate*			*Combined*
	OASDI	*HI*	*Total*	*OASDI*	*HI*	*Total*	*Rate*
1983	5.4	1.3	6.7	5.4	1.3	6.7	13.40
1984	5.4	1.3	6.7	5.7	1.3	7.0	13.70
1985	5.7	1.35	7.05	5.7	1.35	7.05	14.10
1986–1987	5.7	1.45	7.15	5.7	1.45	7.15	14.30
1988–1989	6.06	1.45	7.51	6.06	1.45	7.51	15.02
1990 and later	6.2	1.45	7.65	6.2	1.45	7.65	15.30

The maximum amount of wages to which the Social Security tax rate applies is $35,700 for 1983, $37,800 for 1984, $39,600 for 1985, and $42,000 for 1986. This amount, also referred to as the wage base, is automatically adjusted each year to take account of the increase in average earnings in the economy. The SSA must publish the wage base for the succeeding calendar year in the Federal Register by November 1 of each year. The taxes are imposed without regard to the expectation or receipt of Social Security benefits.

A refund of taxes is possible only if the taxes were improperly withheld or if excess taxes are withheld in a calendar year. In the first situation, the employer is expected to claim a credit against future taxes and to make a refund to the employee. In the second situation, the employee claims a refund when the individual income tax return is filed. There is a specific line item on Form 1040 for claiming excess Social Security taxes.

For purposes of determining the maximum wages subject to Social Security taxes, the Federal government is considered to be one employer. Thus, if an employee transfers from one agency to another, wages paid by the prior agency may be taken into account in determining the current employee's share of taxes.

Subchapter S3. General Benefit Provisions and Appeals Rights

S3–1. MONTHLY BENEFITS

a. Monthly Social Security benefits can be paid to:

(1) a retired insured worker age 62 or over;

(2) a disabled insured worker.

b. Monthly payments can be made to a retired or disabled worker's:

(1) unmarried children under age 18 (or under age 19 if a full-time student at a secondary or elementary school);

(2) unmarried children age 18 or over who are under a disability which began before age 22;

(3) certain dependent grandchildren;

(4) spouse age 62 or over;

(5) divorced spouse age 62 or over if the marriage lasted at least 10 years;

(6) spouse under age 62 if he/she is caring for a worker's child under age 16 (or disabled) who is entitled to a benefit based on the retired or disabled worker's earnings.

c. Monthly payments can be made to a deceased worker's:

(1) unmarried children under age 18 (or under age 19 if a full-time student at a secondary or elementary school);

(2) unmarried child 18 or over who is under a disability which began before age 22;

(3) certain dependent grandchildren;

(4) surviving spouse or surviving divorced spouse age 60 or older, if the marriage lasted at least 10 years;

(5) surviving spouse of surviving divorced spouse if he/she is caring for a worker's child under age 16 (or disabled) who is entitled to a child's benefit;

(6) surviving spouse or surviving divorced spouse between ages 50 and 60 who becomes disabled no later than 7 years after the worker's death, or within 7 years after he/she stops getting checks as a surviving spouse caring for the worker's children, or within 7 years after his/her previous entitlement to such disabled spouse's benefits terminated because the disability ceased;

(7) dependent parents age 62 or older.

d. Benefits may be paid to a divorced spouse age 62 or over of a fully insured worker who is at least age 62 regardless of whether the worker is receiving benefits. The marriage must have lasted at least 10 years and the couple has to have been divorced for at least 2 continuous years.

S3–2. ELIGIBILITY REQUIREMENTS

a. Insured for benefits. To receive Social Security benefits, a worker needs at least 6 but never more than 40 work credits or "quarters of coverage" on his or her earnings record, i.e., needs an insured status. There are three types of insured status: fully insured, currently insured, and insured for disability benefits. See subsection S3–2d for insured for disability.

(1) Fully insured. To be fully insured, a worker needs one work credit for each year after the year the worker reached age 21 and before the year of reaching age 62, if born in 1929 or later. A worker born before 1930 needs only one work credit for every year after 1950 through the year of reaching 62 years of age. In survivor cases, the year of death is used rather than the year of reaching age 62 and in disability cases, the year the worker became disabled is used. It is not material when these work credits were earned.

(2) Currently insured. To be currently insured, a worker needs only six work credits in the last three and one-quarter years before death, retirement or onset of disability.

b. Retirement benefits. Fully insured status is required for entitlement to retirement insurance benefits. A fully insured worker is entitled to monthly retirement benefits upon filing an application with the SSA on reaching age 62 for a full calendar month, but the benefit will be payable at a reduced rate. Benefits are payable at the full rate when they begin at age 65. The fully insured status of a worker permits the payment of benefits to the eligible spouse and children.

c. Survivors benefits. All survivors benefits may be paid on the basis of a fully insured status. In addition,

benefits based on a currently insured status only may be paid to children (including grandchildren) and the surviving spouse (or surviving divorced spouse) described in subsection S3–1c(5).

d. Disability benefits. There are five different sets of work requirements a worker must meet to be eligible for disability benefits in addition to the basic requirement of not being able to engage in substantial work activity because of physical or mental impairment of at least 12 months duration. They are:

(1) If a worker becomes disabled before age 24, only six work credits in the 3 years before the start of disability are needed.

(2) If a worker becomes disabled between the age of 24 and 31, only one-half of the work credits for the period between the 21st birthday and the start of disability is needed.

(3) If a worker becomes disabled between the ages of 31 and 42, 20 work credits in the 10 years before the start of disability are needed.

(4) If a worker becomes disabled between the ages of 43 and 65, both the fully insured status requirement and the requirement in subsection S3–2d(3) must be met.

(5) If a worker becomes disabled by blindness, a work credit is needed for every year after 1950 or age 21, if later, up to the year the worker becomes blind.

S3–3. COMPUTING THE AMOUNT OF THE BENEFIT

The amount of the monthly benefit to which a worker and the worker's dependents and survivors are entitled depends on the worker's average earnings in covered employment and self-employment. The amount of these monthly payments is determined by the SSA when a claim is filed, under a formula fixed in the law.

S3–4. EFFECT OF CONTINUING WORK ON RECEIPT OF BENEFITS

The earnings of a Social Security beneficiary under age 70 may affect the amount of benefits payable. The general rule is that if a beneficiary earns more than the annual limit, $1 in benefits is withheld for each $2 earned above the annual limit. The annual limit that a beneficiary can earn without having any benefits withheld is increased each year to keep pace with the average wage levels. Benefits are payable for all months in which a person is age 70 or older regardless of the amount of earnings in those months. Regardless of a person's total yearly earnings, there is a special monthly rule that allows a person to get a full benefit for any month in which more than a monthly limit of wages was not earned and substantial services in self-employment were not performed. This rule applies only to the first year of retirement for retirement age beneficiaries and to the first and last year of entitlement for beneficiaries such as children and mothers, fathers, wives or husbands with a child-in-care. When application is made for retirement or survivors benefits, the Social Security district office will explain in detail the effect of earnings from employment and self-employment on the receipt of benefits, and will describe when and how reports of earnings should be made to the SSA.

S3–5. APPEAL RIGHTS

If a claimant is not satisfied with the SSA's action on an application for benefits, the claimant may request that it be reconsidered; subsequently a hearing before an Administrative Law Judge (ALJ) of the Office of Hearings and Appeals, and a review of the ALJ's decision by the Appeal Council (AC) may be requested. If still not satisfied, a claimant has the right to bring a civil action in a Federal District Court.

Subchapter S4. Medicare

S4–1. MEDICARE UNDER SOCIAL SECURITY

a. Medicare. Medicare is a Federal health insurance program available to three categories of individuals: the aged, the disabled, and those having end-stage renal disease. The Medicare program consists of two distinct parts: hospital insurance (HI) or Part A, and supplementary medical insurance (SMI) or Part B.

b. Part A. The hospital insurance part of Medicare provides payment for covered inpatient hospital care, post-hospital extended care, and home health services.

c. Part B. The medical insurance part of Medicare helps pay for physicians' services, home health services, hospital outpatient services, and medical and other services and items not covered under hospital insurance.

S4–2. INSURED STATUS FOR HOSPITAL INSURANCE PROTECTION

To be eligible for premium-free HI, an individual must first of all be *insured* based on his/her own earnings or those of a spouse, parent, or child. To be insured, the worker must have a specified number of quarters of coverage (QC's); generally, an individual who has sufficient QC's to be insured for monthly Social Security retirement, survivors, or disability benefits is also insured for HI.

S4–3. MEDICARE QUALIFIED FEDERAL EMPLOYMENT—HOSPITAL INSURANCE PORTION OF SOCIAL SECURITY TAX

a. Federal employment and medicare coverage. Section 210(p) of the Social Security Act provides generally that all Federal employees excluded from OASDI taxes will nevertheless be subject to the hospital insurance tax for wages paid after December 31, 1982. Federal employees will earn quarters of coverage (QC's), but only for Medicare purposes, through the payment of the tax. These *Federal QC's* will be credited for the same amount of wages and in the same way as Social Security QC's. Federal employees will need the same number of total QC's to qualify for Medicare as they would need to qualify under Social Security and must meet the regular requirements as to age, disability, or end-stage renal disease (ESRD) to have Medicare coverage. Federal QC's can be used alone or in a combination with QC's earned for work covered by Social Security to meet the insured status requirements for Medicare purposes. Federal QC's will not be credited if the employee is already insured under the regular Social Security insured status rules (i.e., has a sufficient number of QC's).

b. Deemed Federal QC's. Under a transitional provision of this law, any Federal employee who is in an employer-employee relationship with a Federal agency at any time during January 1983 and was employed before January 1983, will receive *deemed Federal QC's* for his or her Federal service prior to January 1983. Such individual will receive *deemed Federal QC's* for each quarter prior to January 1983 which is not a QC and in which he/she was in Federal employment and which would have been a QC if his/her work for the Federal Government had been covered under the Social Security Act. For purposes of this provision, the phrase, "performs service during January 1983," means that the individual was an employee of the Federal Government (i.e., an employer-employee relationship existed between the individual and the Federal agency or instrumentality) *at any time after December 31, 1982, and before February 1, 1983*. The term *employee* includes individuals in pay status during January 1983 (including those on approved annual or sick leave), those on approved LWOP, and certain other categories of individuals who are in nonpay status. If the individual was not in pay or approved leave status, an employer-employee relationship may, nonetheless, exist. OPM Form 1528, Notification of Earnings for Medicare Eligibility, is used by payroll offices to certify the amount of annual earnings for years prior to 1983. This form should be completed for employees who were employed by the Federal Government during January 1983 and who either (1) separate from service, or (2) continue to work and are old enough to qualify for Medicare. The com-

pleted form is proof that the individual was an employee during January 1983.

S4–4. ELIGIBILITY FOR HOSPITAL INSURANCE PROTECTION

a. Premium-free HI. To be eligible for premium-free HI on the basis of age, a person must be age 65 or older and either eligible for monthly Social Security or railroad retirement cash benefits, or would be eligible for such benefits if the worker's Federal QC's were regular Social Security QC's. An individual need not actually retire and file an application for monthly benefits. If such a person continues working beyond age 65, he or she may instead elect to file for HI only.

b. Premium HI. Individuals age 65 or over who are not insured may purchase HI coverage by paying a monthly premium. To purchase HI coverage, the person must be a U.S. resident and either a citizen or an alien lawfully admitted for permanent resident with 5 years' continuous residence in this country. In addition, the person must also enroll and pay the monthly premium for SMI.

c. A disabled person. A disabled individual who is entitled to Social Security or railroad retirement benefits on the basis of disability is automatically entitled to HI after 24 months of entitlement to such benefits. Since there is a 5-month disability benefit waiting period, the person actually becomes entitled to HI after being disabled for 29 months. In addition, disabled persons who are not insured for monthly Social Security disability benefits but would be insured for such benefits if Federal QC's were Social Security QC's are deemed to be entitled to disability benefits and are automatically entitled to HI after being disabled for 29 months.

d. End-stage renal disease. People with end-stage renal disease are also eligible for HI. To qualify, the individual must require regular dialysis or have had a kidney transplant. If an individual is a Social Security cash beneficiary or has the required QC's, that person, or that person's spouse or dependent child is eligible for HI if any one of them contracts end-stage renal disease. Entitlement begins with third month after the month regular dialysis begins. However, this 3-month qualifying period can be waived if the individual participates in a course of self-dialysis training during the waiting period. In the case of transplant, entitlement generally begins with the month the transplant is received.

S4–5. ELIGIBILITY FOR SUPPLEMENTARY MEDICAL INSURANCE PROTECTION

Anyone who is entitled to premium-free HI is eligible for SMI. Since SMI is a voluntary program which requires the payment of a monthly premium, those individuals entitled to HI who do not want SMI may refuse enrollment. A person age 65 or over who is not entitled to premium-free HI may qualify for SMI. Such an individual must be a U.S. resident and either a citizen, or a alien who has been lawfully admitted for permanent residence with 5 years continuous residence in this country.

S4–6. ESTABLISHING MEDICARE ENTITLEMENT

To find out whether an aged person is eligible for Medicare and to assure that the person gets the full protection of Medicare starting with the month of attainment of age 65, he/she should check with any Social Security district office about 2 or 3 months before attaining age 65. However, if the person was entitled to Social Security benefits prior to attainment of age 65, he/she will be automatically entitled to Medicare as of the month of attainment of age 65. Disabled persons and those with end-stage renal disease should file an application for Medicare (or for Medicare and Social Security disability benefits) at any Social Security district office as soon as possible after becoming disabled.

S4–7. FINANCING MEDICARE

a. Hospital insurance. The HI part of Medicare is financed by compulsory HI taxes paid by employees, employers, and the self-employed.

b. Supplementary medical insurance. The SMI part of Medicare is financed from premium payments by people enrolled in SMI, together with contributions from funds appropriated by the Federal government. The SMI premium covers one-fourth of the cost of the SMI program and is refigured each year to reflect annual increases in program costs.

*U.S. GOVERNMENT PRINTING OFFICE: 1986- 490-594:2453